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**Congress of the United States**  
Washington, DC 20515

**RECEIVED**

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November 16, 1998

US Fish & Wildlife Service  
CCFWO, Arcata, CA

Mr. Bruce Halstead  
U.S. Fish & Wildlife Service  
1125 16<sup>th</sup> Street, Room 209  
Arcata, California 95521

Re: Permit numbers PRT-828950 and 1157

Dear Mr. Halstead:

We are writing to provide our comments and express continued concern with regard to the combined Habitat Conservation Plan/Sustained Yield Plan that has been developed by the Pacific Lumber Company (PALCO) in an effort to secure an incidental take permit under the Endangered Species Act (ESA). This plan, which will guide logging activities on more than 200,000 acres of PALCO lands for as long as 50 years, continues to be scientifically deficient in many areas and without significant changes, could appreciably reduce the likelihood of survival and recovery of endangered coho, and other endangered species in the North Coast ecosystem. As you know, this would constitute a violation of the Endangered Species Act.

The Departments' continued support for this seriously flawed plan cannot help but sustain questions about the Administration's policies regarding the development of HCPs and the no-surprises guarantee. In order to avoid such an ESA violation and the lengthy court battles that will ensue, the Administration must ensure that several significant changes are made to the plan before it is approved.

**Riparian Management Zones, No-Cut Buffers and Watershed analyses**

The importance of Riparian Management Zones (RMZs) cannot be underestimated as they will likely provide some of the only remaining habitat on PALCO lands for coho, murrelet and other endangered species that are intended to be covered by this plan. Of primary concern in the HCP is the size of the no-cut buffers within the RMZs, as well as the amount of logging that will be allowed to take place within the remainder of the RMZs outside the buffers.

Regardless of whether you are considering the interim buffers proposed in the HCP or those required in the legislation passed by the State of California, the no-cut buffers within the RMZs are far narrower than the recommendations of federal scientists and woefully inadequate in comparison to the requirements for national forests lands. The restrictions on logging activities within the RMZs (outside the no-cut buffers) are also inadequate, placing further pressure on the no-cut buffers. Moreover, the watershed assessments proposed by PALCO to determine the long term prescriptions that will apply in the RMZs are poorly defined and arbitrarily restricted.

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While we appreciate the requirements of the State legislation (AB 1986) to increase the size of the interim no-cut buffers that would be required in the HCP as a condition for receiving State money, unfortunately it also attempts to limit the size of the buffers that can be prescribed after the watershed assessments are completed. The draft HCP also proposes to limit these buffers. Such limits are not defensible biologically, nor is it legal under the parameters of the ESA for a state law to limit the prescriptions of a federal HCP.

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Biologically defensible no-cut buffers must be incorporated into the interim measures. The restriction on harvesting in the limited entry bands in the RMZs also must be more stringent. In particular, if tree sizes specified as a condition for entry are not present or if cable yarding is not feasible, harvesting should not be allowed. Moreover, the final HCP approved by the Administration must clarify that buffer size recommendations that result from the watershed analyses cannot be limited by the State legislation or the HCP. If larger buffers are needed, the federal agencies should be allowed to prescribe them, and PALCO should not have the authority to reject them. Otherwise, the outcome of the watershed assessments will have been specified before they have begun.

#### **Logging methods, Mass wasting strategy and Hill slope management**

Although much of the criticism of the HCP has focused on the width of and restrictions in buffer zones, the logging rates and methods that PALCO proposes to use outside the buffers also have the potential to have drastic impacts on the streams and aquatic ecosystem. As the Sustained Yield Plan (SYP) indicates, PALCO intends to rely heavily on clear cutting as a harvest method. At least 64% of the lands scheduled for harvest in the first decade will be clear cut and at least 74% of this logging will be tractor logging which causes substantial impacts on soil disturbance and erosion. In addition, the SYP proposes to eliminate virtually all old growth outside of the protected areas.

This logging could result in erosion and mass wasting that could undermine the buffers and RMZs that are established, particularly if they are not increased in size. This concern is exacerbated by the fact that much of PALCO forests are found on some of the steepest and most unstable hillsides in the country. The plan, as drafted, allows PALCO to determine the mass wasting and erosion risks in steep slope areas where logging is proposed and to suggest measures for mitigating this risk when submitting individual timber harvest permits (THPs). The California Department of Forestry (CDF) will then be responsible for determining whether the measures proposed by PALCO in the THP will avoid significant impacts.

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While the HCP states that CDF will consider the recommendations of other agencies, including those agencies responsible for enforcing the ESA, CDF will have the final say on whether mass wasting mitigation measures will avoid significant impact and whether a proposed THP is consistent with the requirements of the HCP. The controversy between CDF and the National Marine Fisheries Service this past July concerning the potential mass wasting impacts of two particular THPs demonstrates that this strategy cannot be relied upon to provide adequate protection to the aquatic habitat.

In order to avoid significant erosion, mass wasting, and devastation of aquatic habitat, selective harvest (identified in the Administration's draft EIS as the environmentally superior alternative) should be the primary harvest method in the plan, not clear cutting. Moreover, the federal agencies, not PALCO and the CDF, should make the final determination as to whether mass wasting mitigation measures

specified in individual THPs will avoid significant impact and buffer zones, and whether the THP is in fact consistent with the HCP. Logging may be entirely inappropriate in many steep slope areas, and the federal agencies granting the incidental take permit under a federal HCP must have the authority to make that determination if PALCO and CDF will not.

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### **Road Management Strategy**

An aspect of the plan that also has the potential to devastate aquatic habitat and water quality by causing significant erosion problems is road management. First, the plan does not prohibit new road construction in the Riparian Management Zones, the buffers that are intended to protect the aquatic habitat. In addition, construction or reconstruction of roads throughout PALCO lands would be permitted to occur during the winter months when the greatest chance for runoff and siltation are likely to occur. Nor is there any requirement in the plan that roads be monitored during the winter months when sediment input to watercourses is most significant. In addition, road stormproofing specifications in the plan are inadequate.

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In October, PALCO was cited for several violations of state forest practice rules. In one instance, logging trucks were found to have crossed a stream without installing required erosion controls. If the company demonstrates this lack of concern for road erosion in areas they were told to protect, what type of activities can be expected in situations where there are no prohibitions or restrictions on road construction or use.

Therefore, if this plan is truly intended to protect aquatic habitat, road construction in RMZs and winter road construction or reconstruction should be prohibited throughout the range of the HCP. In addition, more stringent road storm proofing requirements must be specified that do not rely solely on the judgement of PALCO employees to determine the necessity of implementation.

### **Cumulative effect triggers and land management responses**

Several of the watersheds on Pacific Lumber's land are already considered "cumulatively impacted" by state and federal agencies as a result of past logging activities. Most of the large streams and rivers on the property are listed as water quality impaired under Section 303(d) of the federal Clean Water Act. The California Department of Forestry has also finally determined the existence of significant cumulative impacts in several watersheds, including Bear Creek, the Elk River, Jordan Creek, Stitz Creek and Freshwater Creek.

Yet the Sustained Yield Plan seems to assume that no further cumulative impacts will arise from its implementation, despite the loss of 68% of the ownership's late seral forest, construction of approximately 400 additional miles of roads over the next fifty years, and a significant reliance on destructive practices such as clear cutting and tractor yarding. There does not seem to be any provision whatsoever in the HCP/SYP that would trigger a change in management practices if significant adverse cumulative effects occur. Indeed, the Administration's "no surprises" policy will ensure that no changes will be allowed. The best available science documents that impacted watersheds require cessation of adverse management activities-in order to recover. There do not appear to be provisions in the HCP/SYP that would allow for this recovery period, regardless of the level of adverse cumulative effects that occur.

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The potential for the occurrence of greater cumulative effects must be accounted for in the final HCP/SYP. A no surprises guarantee that ignores the need to address cumulative impacts by potentially altering activities in the future, is another example of the flawed nature of the Administration's controversial policy.

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### **Monitoring**

The reliance of this plan on a complex set of buffers, hillslope management, road construction and watershed analyses will require significant monitoring of both mitigation effectiveness, as well as compliance. Given the great lack of scientific uncertainty with respect to proposed mitigation measures and PALCO's poor record of compliance with California forest practice rules, including several violations last month, it is obvious that a stringent monitoring program will be necessary.

Unfortunately, the HCP does not propose such a program. Instead, the PALCO HCP makes the company responsible for monitoring with no system of checks by the federal agencies. This is of great concern, as last week the State of California suspended PALCO's logging license for the second time in a year due to repeated violations of state forest practice rules. Given this, and the fact that the California Department of Forestry has issued more than 300 violations to the company in the past three years, it is clear that the company cannot be relied upon to monitor its own compliance with the HCP.

In addition, the California Department of Forestry will make the final determination as to whether individual timber harvest permits are consistent with the HCP. Again, we must recall that last July the National Marine Fisheries Service found that two different permits were inconsistent with the prescriptions of the Agreement in Principle that PALCO had signed while negotiating the HCP. Despite the problems raised by NMFS, CDF approved the permits anyway and logging commenced.

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If this federally approved HCP is going to be effectively enforced by the federal agencies within the requirements of the ESA, those agencies should retain the ultimate authority to determine whether PALCO's logging activities are consistent with the HCP. In addition, a compliance monitoring program, that does not rely solely upon the company for enforcement, must be included in the final plan.

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### **Coverage of Species and Activities is too Broad**

As written, the HCP is intended to provide coverage for 36 different species, although many of them are not now listed under the ESA. If the species are listed at some point in the future, incidental take permits would automatically be issued to PALCO and the no-surprises policy would prevent further changes to the plan regardless of whether failures in the plan itself had led to the need to list the species. Moreover, even if the government wants to pay for needed changes, they are prohibited from doing so without company approval.

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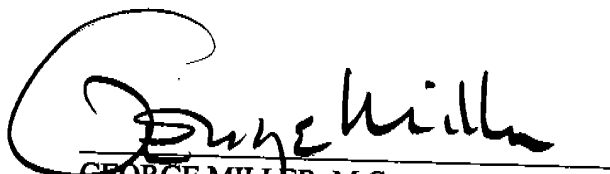
Given the limited amount of information and analysis that is available for these species as they relate to this plan and that the plan provides little or no monitoring of the status of these species, the HCP should not provide a blanket take permit for such a broad number and scope of species that may or may not be protected.

The HCP/SYP, while intended to address the impacts of logging activities on PALCO lands also proposes that an incidental take permit should be provided for other activities, including grazing and gravel mining. Given the lack of information that is provided about these activities, their impacts, and how the company plans to respond to problems, a 50 year no-surprises permit should not be granted. If clear requirements for addressing these problems are not spelled out in the plan up front, the Administration will be unable to require them at some point in the future under this permit.

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In conclusion, these comments represent some of the very serious concerns that must be addressed before the PALCO HCP/SYP is approved. Representatives of the Administration have stated on more than one occasion that this plan may provide the road map for the protection of endangered fish habitat on the West Coast. If this is true, and substantive improvements are not made to the plan, we fear that in reality, it will be a road map for disaster for endangered species in California and along the entire coast. In a desire to conclude this deal, the Fish and Wildlife Service and the National Marine Fisheries Service cannot lose sight of their responsibilities under the Endangered Species Act and the public interest in recovering coho, and other endangered species. If they do, it could cast serious doubt on the credibility of the Administration's HCP development and approval policies.

Sincerely,

  
GEORGE MILLER, M.C.



